IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : November 16, 2006

Criminal Appeal No. 368-DBA of 1997

State of Punjab versus Mukhtiar Singh and Gurmail Singh

AND

Criminal Revision No. 56 of 1997

Surjit Kaur versus Mukhtiar Singh and Gurmail Singh

Coram: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present : **In Criminal Appeal No. 368-DBA of 1997**
Mr. MS Sidhu, Senior Deputy Advocate General, Punjab
Mr. T.S. Sangha, Advocate for the respondents

In Criminal Revision No. 56 of 1997
Mr. A.P.S.Deol, Advocate for the petitioner

Virender Singh, J.

The State of Punjab has filed Criminal Appeal No. 368-DBA of 1997 against the acquittal earned by respondent Mukhtiar Singh and his son Gurmail Singh (hereinafter to be referred to as 'accused') vide impugned judgment of learned Sessions Judge, Bathinda dated September 14, 1996.

They were booked in a case FIR No. 30 dated 15.4.1994, registered at Police Station GRPS Bathinda under sections 302/34 IPC for allegedly causing the murder of Babu Singh (real brother of Mukhtiar Singh accused) on 15.4.1994 at about 5.30 AM at Railway Station Kahangarh. Both the accused were charged under sections 302/34 IPC.

Criminal Revision No. 56 of 1997 was also filed by Surjit Kaur which was ordered to be heard with the main appeal vide order dated 22.4.1997.

The flash back of the prosecution case is that a land dispute had been going on between Mukhtiar Singh and his brother Babu Singh (since deceased) which had ended in favour of Babu Singh. Mukhtiar Singh accused was aggrieved there-by. His two sons Gurmail Singh and Harbans Singh had caused injuries to Babu Singh which resulted into fracture of his leg and thereafter Harbans Singh son of Mukhtiar Singh accused was murdered by Babu Singh and his son Buta Singh. Buta Singh was lodged in Central Jail, Bathinda. On April 15, 1994, Babu Singh and his family members which included his wife Surjit Kaur (PW3), son Makhan Singh PW2, Jasvir Kaur daughter-in-law and Balwant Singh father-in-law of Babu Singh's daughter had decided to visit Bathinda jail where Buta Singh was lodged and for that they had to catch a train from their village at about 5.00 AM. All had reached Kahangarh Railway Station and were waiting for arrival of the train. Since the train was late, ticket

window was closed. Except Babu Singh all had seated themselves on a bench while Babu Singh was standing nearby. Mukhtiar Singh accused armed with a kirpan and his son Gurmail Singh armed with a takua, came there. Mukhtiar Singh gave two kirpan blows on the neck of Babu Singh and another on his head, consequently, he fell down. Gurmail Singh then gave blows on his chin, right shoulder, left shoulder and chest. The family members of Babu Singh raised alarm. Mukhtiar Singh accused exclaimed that they had avenged murder of his son. One SPO Gurdas Singh (PW5) who was posted on the Assault Post, Kahangarh Railway Station came running and challenged the accused but both the accused managed to escape. A wireless message was received in Railway Station, Bathinda at 11.50 AM upon which ASI Gurdip Singh PW4 accompanied by other police officials reached the Railway Station, Kahangarh where Surjit Kaur widow of the deceased, Jasvir Kaur, Makhan Singh, Balwant Singh and aforesaid Gurdas SPO were found present. He prepared the inquest report Ex. PC which was attested by Surjit Kaur and Makhan Singh. Thereafter statement (Ex. PM) of Surjit Kaur was recorded at 5.15 PM, made endorsement Ex. PM/1, upon which a formal FIR Ex. PM/2 was registered in the concerned Police Station. The aforesaid ASI Gurdip Singh went to the spot, lifted the blood stained earth and put it into a container. After sealing the same, the container was taken into possession vide recovery memo Ex. PK which was attested by the witnesses. SPO Gurdas Singh also

produced a pair of shoes which was taken into possession vide memo Ex. PU. A sum of Rs 165/- was also recovered from the person of the deceased. A rough site plan Ex. PR of the place of occurrence was also prepared by the Investigating Officer. The autopsy on the dead body of Babu Singh was conducted on the next day (16.4.1994) by Dr. Kuldip Rai PW1.

Sub Inspector Hukam Chand (not produced) arrested both the accused on April 20, 1994. Thereafter, the investigation was taken up by aforesaid ASI Gurdip Singh PW4 and during interrogation accused Mukhtiar Singh suffered a disclosure statement Ex. PU about concealing of kirpan and blood stained clothes. Similarly Gurmail Singh accused also suffered a disclosure statement Ex. PV about concealment of takua and blood stained clothes. Thereafter the accused Mukhtiar Singh got recovered his kirpan and blood stained clothes. Kirpan was taken into possession vide memo Ex. PU/1 and its sketch Ex. PU/2 was also prepared. The blood stained clothes were also taken into possession vide separate recovery memo. Similarly Gurmail Singh also got recovered takua which was taken into possession vide recovery memo Ex. PV and its sketch Ex. PV/2 was also prepared. His blood stained clothes were also taken into possession.

After the completion of the investigation, challan was filed against both the accused and they were charged under sections 302/34 IPC.

The prosecution in order to substantiate the charge had examined Dr. Kuldip Rai, PW1 who was posted at Community Health Centre, Budhlada and had conducted the autopsy on the dead body of Buta Singh on 16.4.1994 at 10.35 AM and found the following injuries:-

"1. Incised wound 14 x 4 cms on right side of neck extending from middle of front of chin to the level of right ear (4 cms below right ear). Clotted blood was present.

On dissection and exploration skin was found cut. Muscles were also cut, Neck vessels and nerves were cut and haematomma was present in the wound.

2. Incised wound 8 x 5 cms on right side of neck extending in front upto midline 3.5 cms below injury No. 1. Clotted blood was present. On dissection muscles were cut vessels and nerve were cut and haematomma was present in the wound.
3. Incised wound 4 x 3 cms on front of chin. Clotted blood was present. On dissection underneath muscles, vessels and nerves were cut. Mandible was also cut. Haematomma was present.
4. Incised wound 3.5 x 1.5 cms on front of right shoulder. Clotted blood was present.
5. Abrasion 4 x 1 cm on front of left shoulder. Clotted blood

was present.

6. Incised wound 7 x 2.5 cms on back of middle of head extending to right. On dissection scalp was cut. Bone was cut. Mennings were cut and brain matter injured and haematomma was present in brain matter.
7. Abrasion 7 x 1 cm in front of right shoulder 3 cms above injury No. 4. Clotted blood was present
8. 17 x .05 cm abrasion on front of chest, 2 cms below injury No. 4. Clotted blood was present.

Kirpan and takua allegedly recovered pursuant to the disclosure statements suffered by the accused were also shown to the doctor who opined that the injuries on the person of the deceased could be inflicted by the said weapons.

In the opinion of the doctor, the cause of death was due to shock and haemorrhage as a result of aforesaid injuries which were ante mortem in nature and sufficient to cause death in ordinary course of nature. Probable time that elapsed between injuries and death was within a few minutes and between death and post-mortem more than 24 hours.

Makhan Singh PW 2 is the son of deceased and had given a complete occular version of the occurrence. He has also mentioned the background of the previous enmity.

Surjit Kaur PW3 is widow of Babu Singh. She has given an eye version account of the occurrence. Her statement is Ex. PM made to ASI Gurdip Singh, the Investigating Officer.

ASI Gurdip Singh PW4 is the Investigating Officer. The investigation carried out by him has also been described by us in the preceding paras of our judgment.

SPO Gurdas Singh PW5 was posted on the Assault Post, at Kahangarh Railway Station and according to his substantive statement, he was on duty from 3.00 AM to 6.00 AM as Sentry on the Assault Post. At about 5.15 AM, he had heard hue and cry raised from the Railway Station and then challenged that whosoever was there at a particular spot should remain standing otherwise he would shoot him. It is then stated by him that he rushed to the Railway Station and found dead body there. Two ladies and two men were present near the dead body. He noticed two persons running towards village Kahangarh, one was carrying a kirpan and the other was carrying a takua. He chased them for some distance but could not succeed to catch them and returned. This witness further stated that one lady (Surjit Kaur) told that the dead body was of her husband Babu Singh and on account of old enmity the accused, her jeth and his son Gurmail

Singh caused injuries on the person of her husband.

Report of the Chemical Examiner Ex. PX, report of Serologist Ex. PY and report of the Director, Forensic Science Laboratory Ex. PZ were also tendered into evidence by the prosecution.

The stand taken by both the accused as emerges from their statements recorded under section 313 Cr.P.C. is that it was a blind murder and they have been falsely implicated. Mukhtiar Singh has stated that the complainant side in collusion with the police had falsely implicated him and his son Gurmail Singh as they are only male members in their family. No witness in defence was produced.

From the side of the accused, primary argument was that it was a case of blind murder which had taken place in the twilight of morning of April 15, 1994 and that the occurrence was not witnessed by any of the witnesses and further more the message which was received through the wireless at GRPS Bathinda at 11.50 AM neither disclosed the identity of the deceased or the PWs nor the accused and it simply disclosed that a dead body was lying at Railway Station, Kahangarh which goes to show that the witnesses were not present at the time of alleged occurrence. The investigation conducted in this case was also biased and unfair.

We feel the necessity of reproducing herein paras 15 and 16 of the impugned judgment wherein, the learned trial court has discarded the

case of the prosecution :-

> "**Para-15**:- It is reasonable to presume without much fear of contradiction or doubt that till 11.50 AM when the first message was received regarding a dead body lying at R.S.Kahangarh, the names of the deceased, eye witnesses and the accused were known, neither to any railway official, or to Station Master on duty at Kahangarh, nor to any passenger, or guard on the train which reached Bathinda from the Jakhal side via Kahangarh, nor even to Gurdas Singh (PW5). There are too many gaps in Gurdas Singh's version which are required to be explained, before it can be accepted. The failure of the Station Master, Kahangarh to flash a telephonic message to Bathinda on account of the telephone being out of order, omission by Gurdas Singh to enter his departure report in his Daily Diary Register at the Assault Post, the absence of the other two colleagues from the Assault post, his borrowing a scooter to go to Budhlada instead of taking train which was due and which was the natural thing to do, if he was to perform his duty diligently he ought to have sent information through the Guard of the train to Bathinda, his going to Budhlada and

sending a message to Bathinda via Delhi and that message being the one received at Bathinda at 11.50 AM are incredible. The whole story is a concoction to cover up delays on the part of the railway authority and the railway post in reporting the matter. It is a cock-and-bull story which is a figment of imagination and no court is expected to believe it. Seen in its proper light, the prosecution case falls down completely and it is possible that the family of the deceased knew nothing about the occurrence till they were called from their village after arrival of the police at the railway station. Interestingly, the investigator did not record the statement of Surjit Kaur immediately on arrival at the place of occurrence, but instead proceeded to inspect the spot and prepared inquest report Ex. PC before recording statement of Surjit Kaur. This is strange because if the eye witnesses were really present and had been waiting at the spot for the arrival of the police they would be keen to give their statement and the investigator who was ignorant about main features of the crime keen to record it, before he started examining the dead body and prepares the inquest report.

The usual argument of defence counsel, in criminal cases,

has always been that the police inspected the spot and saw the injuries on the person of the deceased, before finalising the prosecution version and recording the F..I.R. after due deliberation and consultation. In all those cases the police vehemently denies that this was done and the prosecution also, as far as may be, does not produce any evidence which may even given an inkling that the dead body was examined by the investigator, before the statement of the witnesses were recorded. Surprisingly, in the present case the police did exactly. What should never be done by examining the deadbody and then recording the statement of Surjit Kaur PW. The inquest proceedings were finalised before the statement of Surjit Kaur was taken down. Pre-registration investigation by the investigator was done, so that the final version would get some semblance of corroboration from the medical evidence. This further strengthens the view that the eye witnesses did not see the occurrence and the story was finalised in consultation with the investigating after the inquest report was prepared and the dead body thoroughly examined. "

"Para-16:- Seen in the above light there are other features in

the case which tend to confirm the absence of eye witnesses, and these are Makhan Singh being spared by the accused, the absence of blood stains on the clothes of the witnesses, absence of eye witnesses from the public, who must have been present at the railway station, failure to match the shoes recovered with the feet of the deceased, the conclusion reached by this court is that Gurdas Singh (PW5) was not disclosed anything, by any of the witnesses and the message sent by him, or on his instructions, or by any other railway official, to G.R.P.S. Bathinda, did not contain the names of the deceased, eye witnesses and the accused. Whoever sent the message knew none of the facts and if it is believed that Gurdas Singh was the originator of the message, then even he was not aware of these facts, there-by the conclusion that can be drawn is that the eye witnesses were not present near the dead body and did not narrate the occurrence to Gurdas Singh or to any one else. The case was finalised after due deliberation between the police, and after the eye witnesses reached the spot on learning of the murder of Babu Singh."

We have heard Mr. Sidhu, learned counsel for the appellant-

State who is assisted by Mr. APS Deol, Advocate. Mr. Deol is also representing Surjit Kaur in Criminal Revision No. 56 of 1997. Mr. T.S.Sangha, Advocate has assisted us on behalf of both the accused. We have also perused the evidence on record very minutely and gone through the relevant documents from the trial court records.

Mr. Sidhu states that the presence of Makhan Singh and Surjit Kaur at the scene of occurrence is most natural as at the time of occurrence they were accompanying Babu Singh deceased for boarding the train to Bathinda, as they intended to visit Buta Singh son of Babu Singh who was lodged in Central Jail, Bathinda. Their evidence has been disbelieved mainly on the ground that in the message sent by Gurdas Singh PW5 who was also present at the Railway Station and had also seen the assailants running towards the side of Kahangarh, did not disclose the name of the deceased or the witnesses. Mr. Sidhu contends that if there was any laxity on the part of the aforesaid Gurdas Singh in not flashing a complete message to ASI Gurdip Singh PW4, the Investigating Officer of this case it would not be a ground to disbelieve the eye version account which otherwise inspires confidence.

Mr. Sidhu then submits that the learned trial court has discarded the case of the prosecution merely on the ground that there are certain gaps in the version of Gurdas Singh PW5 as he did not enter his departure report in the Daily Diary Register at the Assault Post, Kahangarh.

Similarly his conduct in borrowing a scooter to go to Budhlada instead of taking a train in order to report the matter telephonically at GRPS Bathinda has been taken very seriously by the learned trial court. According to the learned counsel, the conduct of Gurdas Singh PW5 is not relevant in the present case and what is to be seen is as to whether the prosecution story as projected by Surjit Kaur, the widow and Makhan Singh the son of the deceased inspires confidence or not. There is no flaw in the testimony of these witnesses which would weaken the case of the prosecution so far as the main occurrence is concerned.

Mr. Sidhu then contends that the recovery of weapons which were found to be stained with blood tallied with the report of the Forensic Science Laboratory, Chandigarh and this is also a circumstance which goes against the accused.

On the basis of the aforesaid submissions, Mr. Sidhu submits that the impugned judgment of acquittal deserves to be set aside and both the accused be convicted for the charge of section 302/34 IPC.

Mr. Deol also toes the line of arguments advanced by Mr. Sidhu.

Controverting the submissions advanced on behalf of the State, Mr. Sangha vehemently submits that there is no demonstrable perversity in the impugned judgment which would call for interference of this Court. Dwelling upon his arguments, Mr. Sangha submits that although appellate

court has power to re-appreciate the evidence yet the criteria for appreciating the case of acquittal is altogether different and if the court is of two views, the one favouring the accused is to be adopted. In the case in hand, the learned trial court has taken a view in favour of the accused by disbelieving the prosecution case on certain material flaws and therefore, there has to be substantial or compelling reasons for up-setting the said view. In the present case there are no such substantial or compelling reasons as the order of acquittal is not palpably wrong or erroneous.

Adverting to the merits, Mr. Sangha submits that the conduct of the witnesses is most un-natural as no attempt was made by the family members of Babu Singh since deceased to catch hold the assailants. He then contends that even post occurrence conduct is also not natural as no one from the village was called by the complainant party despite the fact that the distance of the village from the place of occurrence was just 2 killas as it has come in the statement of Makhan Singh PW, the son of the deceased.

Mr. Sangha then contends that no entry was made by Gurdas Singh PW5 in Police Post at Railway Station Kahangarh and this also creates doubt in the case of the prosecution about the timing of flashing of the message to Police Station GRPS Bathinda which otherwise reached at 11.50 AM that too without indicating any detail about the occurrence so much so that the name of the deceased or the eye witnesses were not even

mentioned in the said message. Strengthening his arguments, Mr. Sangha submits that in case Gurdas Singh SPO had come to know of the name of the deceased, he would have certainly disclosed that fact in the message flashed by him. This all indicates that for a considerable time it was not known to Gurdas Singh SPO as to the identity of the person lying dead and subsequently when ASI Gurdip Singh reached the spot, a story was coined up by the complainant side in connivance with the police to falsely implicate the present two accused-respondents. There was motive for the complainant side to implicate both the persons being father and son on account of previous enmity and therefore, the approach adopted by learned trial court in rejecting the eye version account of aforesaid vital infirmities is not at all perverse.

On the basis of the aforesaid submissions, Mr. Sangha prays for dismissal of the instant appeal.

It is well settled that scope of interference by the appellate court in the judgment of acquittal is very limited and the same has to be disturbed only when the appellate court finds that the view taken by the trial court is palpably wrong. We are also conscious of the settled legal position that if from the set of evidence, two views are possible and the trial court has taken one view on the basis of the said evidence, unless the appellate court comes to the conclusion that the view taken by the trial Court is either perverse or such that no reasonable person could come to that conclusion or

that such a finding of the trial court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the trial court.

In **Ramesh Babulal Doshi vs. State of Gujarat (1996) 9 SCC 225,** their Lordships observed that while sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and only then reappraise the evidence to arrive at its own conclusions.

In a very recent judgment of the Apex Court rendered in **Kallu @ Masih and others vs State of Madhya Pradesh** 2006(1) RCR (Criminal) 427, their Lordships while dealing with an appeal against acquittal have observed that while deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. It is then observed that the significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence

and the view taken is reasonable and plausible and the same shall not be reversed because a different view is possible. It is also held in the said judgment that if the appellate court decides to interfere, it should assign reasons for differing with the decision of the trial court.

In another latest judgment rendered in **Ram Sewak vs. State of U.P.** 2006(1) SCC (Criminal) 534, their Lordships have observed that the High Court as an appellate court can re-appreciate the evidence and interfere with the findings, if they are perverse and palpably wrong.

Following the well settled principle enunciated by the Hon'ble Apex Court in the aforesaid judgments, it can safely be said that acquittal is not infallible and it can be successfully challenged. We after re-appreciating the entire evidence very minutely, are of the considered view that the impugned judgment of acquittal qua both the accused needs to be disturbed. For arriving at the said conclusion, we are now entering into a detailed discussion covering all the material aspects of the case.

The apparent flaw in the impugned judgment noticed by us is that the discussion of the learned trial court is primarily focused on the testimony of Gurdas Singh SPO PW5 and thereafter finding certain faults in the investigation conducted in this case has extended the benefit to both the accused. It is quite obvious that the trial court has not critically examined the eye version account.

The prosecution case is resting upon the statement of Makhan

Singh (PW2) son of the deceased and Surjit Kaur (PW3) the widow of the deceased. Since the learned trial court has not entered into a detailed discussion with regard to their evidence, we are re-appreciating the same with a view to reach a just conclusion.

One material aspect established on the record is that there was a strong motive in the bosom of both the accused to commit murder of Babu Singh as Harbans Singh from their family was murdered by Babu Singh and his son Buta Singh was confined in Central Jail, Bathinda. The previous enmity between the parties is proved from FIR No. 44 dated 11.9.1993 Ex. PN and FIR No. 30 dated 23.7.1993 Ex. PQ. A specific question regarding previous animosity was put to Surjit Kaur in her cross-examination to which she categorically replied that they had no enmity with anyone else other than the present accused. Mukhtiar Singh accused is the real brother of the deceased and a land dispute had been going on between them as is clear from the statement of Makhan Singh PW2 son of the deceased. No doubt motive is a double edged weapon which can cut both ways but in the case in hand, as is clear from the statement of Surjit Kaur that they had no enmity with any one else except with accused side who are from their family only, the chances of false implication are ruled out.

We, however, are not fixing the liability of both the accused on the basis of the motive but are appreciating the case from another

prominent angle that is the presence of Makhan Singh and Surjit Kaur at the time of alleged occurrence. The main factor which weighed in our mind is that once there was an enmity to the extent that after Mukhtiar Singh and his sons including Gurmail Singh had caused injuries to Babu Singh fracturing his leg and in retaliation Babu Singh and his son Buta Singh had murdered Harbans Singh son of Mukhtiar Singh, in all probabilities, Babu Singh would not go all alone to meet Buta Singh who was confined in Central Jail, Bathinda. Rather in such a situation, he would ask for the company of his other family members. It is the case of the prosecution that on the date of alleged occurrence Babu Singh was going to meet with his son Buta Singh and had to catch a train at 5.00 AM from the Railway station of the village. Incidently the train was running late. Therefore, presence of his son Makhan Singh, his wife Surjit Kaur or as a matter of fact other family members as described in Ex. PM was not un-usual or un-natural. It is otherwise very common practice in the villages that two or three persons of the family generally accompany whenever they go to the Jail to meet their family member. Although in the cross-examination of Makhan Singh PW, it has come that his mother Surjit Kaur used to go to meet her son only whenever there was hearing of the case in the Court and he, however, had called his brother to Jail on one or two occasions and the last visit was one or two months prior to the present occurrence, yet it cannot be doubted that on the date of alleged

occurrence, present two witnesses were not accompanying Babu Singh (since deceased). Therefore, in our considered view, the presence of these two witnesses at the time of alleged occurrence is established.

The presence of aforesaid two witnesses is proved from the statement of PW5 Gurdas Singh also who was posted on the Assault Post, Kahangarh. His duty commenced from 3.00 AM to 6.00 AM. His presence at the spot, at least, cannot be doubted. According to his statement he had seen two persons running towards a particular side (village side) carrying weapons. He had also chased them upto a certain distance but could not manage to nab them. When he returned at the scene of occurrence, Surjit Kaur PW disclosed to him about the occurrence. No doubt in his cross-examination we find that he had made certain improvements but the same are not of much importance. We are also conscious of the fact that he does not talk about the presence of Makhan Singh and disclosed whatever was told to him by Surjit Kaur. This, however, would not create any doubt about the presence of Makhan Singh. Gurdas Singh SPO is not an eye witness to the occurrence and rushed towards the spot only after hearing hue and cry emnating from a particular point where the occurrence had actually taken place. He had no reason to support the case of the complainant, had he not seen some part of occurrence as narrated herein above.

Mr. Sangha on the conduct of the aforesaid two witnesses submits that the same is un-natural as no attempt was made by them to catch

hold the assailants. This submission does not advance his case at all. The complainant side was empty handed and both the respondents-accused were armed with sharp edged weapons. Babu Singh was standing by the side of the Bench on which his other family members were sitting. Within a very short span, both accused attacked Babu Singh. Makhan Singh was of the age of 15/16 years at the time of alleged occurrence. He in his cross-examination categorically stated that out of fear he simply raised an alarm without physically intervening. It has also come in his evidence that Mukhtiar Singh after causing injury proclaimed that they had avenged murder of his son. The nature of injuries inflicted on the deceased and the kind of weapons of offence are sufficient to deter them. Therefore, in the present set of circumstances, it cannot be inferred that they were not present at the spot.

Much has been said by Mr.Sangha about the post conduct of the witnesses submitting that no one from the village was called by the complainant party despite the fact that the distance of the village was about two killas from the place of occurrence. We do not give any importance to this aspect. Even otherwise, it has come in the cross-examination of Makhan Singh that about a couple of hours after the occurrence, the village Sarpanch was informed of the incident. He gave his name also. He then states that Baldev Singh Member Panchayat was also informed and he had appeared before the arrival of police. Surjit Kaur also states in her cross-

examination that 7/8 persons from the village had reached the spot after sun rise. This shows that certain persons had gathered from the village may not be immediately after the occurrence. There is nothing un-usual in it for which both the aforesaid star witnesses to the main occurrence should be disbelieved.

Let us now advert to the evidence of PW4 ASI Gurdeep Singh and Gurdas Singh PW5 as the same has been considered in favour of the accused and against the prosecution. No doubt in the initial information flashed by PW5 Gurdas Singh SPO which was received by ASI Gurdeep Singh PW4, the Investigating Officer at Railway Police Station, Bathinda at 11.50 AM was to the effect that a dead body was lying at Railway Station Kahangarh. But the said fact cannot wash away the presence of Makhan Singh and his mother Surjit Kaur at the time of occurrence. Since Gurdas Singh SPO had come at the spot immediately after seeing the occurrence and was apprised of the entire incident by the complainant party, Surjit Kaur or her son could not think of proceeding further. It is their case that they remained at the Railway Station till ASI Gurdeep reached there during the evening hours. After all what more was expected of these rustic people. We can understand that how could they know as to what was the exact message flashed by Gurdas Singh SPO. It was for Gurdas Singh SPO to see as to what was to be said in the said message and not for the

complainant party. It has come in the statement of ASI Gurdeep Singh that no telephone was installed at the Railway Station. However, a telephone was installed at the Railway Control Room at the Railway Station which, however, was found to be out of order and he has made a reference about this fact in the police dairy. Gurdas Singh PW5 further stated in his cross-examination that after the occurrence he had approached the Station Master for flashing the message to Police Station Budhladha but the telephone was not functioning and there was no other arrangement for transmitting any telegraphic message at the Railway Station. He then stated that he had gone to GRP Police Post at Budhlada from where he sent a message to the Control Room at Bathinda on telephone about this occurrence. A specific question was put to him as to whether he had disclosed the names of the accused, the victim and presence of the witnesses in the telephone message to which he replied that he did not disclose that fact and simply a telephone call was made that a dead body was lying at a Railway Station. From the control room a wireless message was received in the Police Station by ASI Gurdip Singh the Investigating Officer at 11.50 AM. No doubt in the Daily Diary Register there is no entry about the departure time of Gurdas Singh for the Police Post Budhladha or even of his returning but the same, in our mind, would not be enough to infer that the eye version account is false and was introduced subsequently after due consultation and confabulations. We have also appreciated the case of the prosecution with regard to the

delay part and are of the view that the delay if any was on the part of the Railway officials especially ASI Gurdeep Singh who consumed a lot of time in reaching the place of occurrence despite the fact that he had received a wireless message at 11.50 AM for which the complainant party cannot be blamed at all. The approach of the learned trial court while discarding prosecution case that it is cock-and-bull story and figment of imagination, in our firm view, is not a correct and reasonable approach in the light of the convincing and trust worthy evidence of aforesaid Makhan Singh and Surjit Kaur PWs.

The learned trial court has discarded the case of the prosecution vis-a-vis the eye version account observing that immediately after reaching the spot ASI Gurdip Singh had not recorded the statement of Surjit Kaur and instead inspected the spot and prepared the inquest report. No doubt ASI Gurdip Singh had stated in his examination-in-chief that after he reached Railway Station Kahangarh, he found Surjit Kaur, Jasbir Kaur, Makhan Singh, Balwant Singh and Gurdas Singh SPO and other persons present near the dead body. After inspecting the spot and examining the dead body he prepared the inquest report Ex. PC and thereafter, recorded the statement of Surjit Kaur. But in our view this can at the most be said to be a laxity on the part of the Investigating Officer who in the first instance should have recorded the statement of eye witness to the occurrence. However, this cannot be a ground to dislodge the eye version account as

un-folded by two natural witnesses to the occurrence. The view taken by the trial court is that the pre-registration investigation done in this case was with an object to give semblance of corroboration to the eye version account from medical evidence. We find this approach to be un-reasonable on the face of it, for the reason that the evidence on record is otherwise. In the inquest report, ASI Gurdip Singh in column No. 10 has shown six injuries on the person of the deceased and the said injuries were incised wounds. In vernacular it is shown as 'tak'. If we see statement of Surjit Kaur Ex. PM which is the basis of the registration of the First Information Report recorded at 5.30 PM at the Railway Station itself, she stated that she, her daughter-in-law, her son Makhan Singh and Balwant Singh were sitting on the bench whereas her husband was standing by the side of the bench. In the meantime, Mukhtiar Singh who was armed with kirpan and his son Gurmail Singh who was armed with a takua reached the platform and after coming at the back of her husband, Mukhtiar Singh wielded a kirpan blow at her husband and he consequently fell down on the ground. Thereafter his son Gurmail Singh gave takua blows to him. The aforesaid facts have been rendered into English from the vernacular of Ex. PM. The difference between the basic statement Ex. PM and the injuries shown in column No. 10 of the inquest report goes to show that the statement of Surjit Kaur has not been recorded for the purpose of semblance of corroboration from the medical evidence. Had it been so, Surjit Kaur would have exhaustively

explained all the injuries on the person of deceased. But it is not so. This was all just in the common routine. It is only when Surjit Kaur stepped into witness box as PW3, she gave some-what more clear picture explaining almost all the injuries at the hands of both the accused. She was, however, not confronted with her previous statement Ex. PM and therefore, accused side cannot derive any benefit from it. In the light of the aforesaid discussion, we can now comfortably conclude that the approach adopted by the learned trial court in discarding the case of the prosecution on this aspect is un-reasonable.

Another fact which goes in favour of the prosecution is that the clothes and the weapons which were recovered pursuant to the disclosure statements of both the accused were also blood stained. May be as per the Serologist report, the blood group could not be ascertained, still it would not demolish at least the recovery part. Doctor of autopsy had also stated that the weapons allegedly recovered from both the accused could cause injuries on the person of deceased. The learned trial court has not discussed this aspect at all in the impugned judgment. We, however, take this aspect as a corroborative piece of evidence, may not be conclusive by itself. For the sake of repetition we may observe that the prosecution case is said to have been proved against both the accused primarily on the basis of the trust worthy eye version account.

We do find certain discrepancies in the statement of both the aforesaid eye witnesses, but in our considered view, the same are not to be given much importance as they do not go to the root of the case. In fact all these are omissions which are bound to occur even in the statement of most truthful witness.

The other features taken against the prosecution by the learned trial court and as observed in para no. 16 of the impugned judgment are not worth consideration in the light of our aforesaid discussion wherein we have believed the eye version account being most reliable.

In view of the foregoing discussion, we can comfortably conclude that the reasons given by the learned trial Judge for acquitting both the accused are un-tenable as the eye version account has been discarded on feeble grounds and un-necessary doubts were entertained despite there being clear and sufficient evidence pointing towards the guilt of both the accused. Therefore, the approach adopted by the trial court is not proper and we differ with the same. After rescanning the entire evidence very minutely, we are forming a view that in all human probabilities appealing to the judicial conscience, the present two acquitted accused have committed the murder of Babu Singh and therefore, they deserve to be convicted under sections 302/34 IPC.

Resultantly, we allow Criminal Appeal No. 368-DBA of 1997 filed by the State of Punjab, set aside the impugned judgment of the trial court and convict both the accused namely Mukhtiar Singh and Gurmail Singh for charge of sections 302/34 IPC for committing the murder of Babu Singh on 15.4.1994.

Undoubtedly accused are to be afforded opportunity of being heard before passing the appropriate sentence but in the case in hand, as we are awarding the minimum sentence to both the accused i.e. life imprisonment provided under the Statute no such opportunity is required to be given to them. We, accordingly, sentence both the accused to life imprisonment and to pay a fine of Rs 10,000/- each, in default thereof to undergo further rigorous imprisonment for one year each.

Criminal Revision No. 56 of 1997 filed by Surjit Kaur is also disposed of accordingly.

There should be no delay and loss of time in taking both the aforesaid convicts into custody for serving their substantive sentence.

All quarters concerned be informed accordingly.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

November 16, 2006
'dalbir'

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : November 16, 2006

Criminal Revision No. 56 of 1997

Surjit Kaur versus Mukhtiar Singh and Gurmail Singh

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. A.P.S.Deol, Advocate for the petitioner

Virender Singh, J.

For judgment, see Criminal Appeal No. 127-DBA of 1997, State of Punjab versus Mukhtiar Singh and Gurmail Singh dated 16.11.2006.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

November 16, 2006
'dalbir'